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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Complainant,

CASE NO. 72,835
TFB NO. 88-10,886 (06D)

v.

JOHN N. SAMAHA,
Respondent.

_____ /

THE FLORIDA BAR'S REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
SYMBOLS AND REFERENCES	iii
STATEMENT OF THE FACTS AND OF THE CASE	1
ARGUMENT	2, 3, 4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

CASES

PAGE

<u>The Florida Bar v. Samaha,</u> 407 So.2d 906 (Fla. 1981)	3
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SYMBOLS AND REFERENCES

In this Reply Brief, the appellant, The Florida Bar, will be referred to as "The Florida Bar" or "The Bar". The appellee, John N. Samaha, will be referred to as "the respondent". "Tr" will denote the transcript of the final hearing held on February 21, 1989. "RR" will denote the Amended Report of Referee. "AB" will refer to respondent's Answer Brief.

STATEMENT OF THE FACTS AND OF THE CASE

Respondent stated in his Answer Brief that Ms. R. "did not object to his touching her body". (AB. p. 6). However, that statement is a distortion of her testimony. Ms. R. testified as follows:

Q. Did you object to his doing that?

A. Not in words, but he knew I was very nervous and very aggravated?
(Tr. p. 34. 1. 24)

In fact, on direct examination, Ms. R. testified as follows:

Q. What did you do after he touched the outside of your vagina?

A. I was scared. I get (sic) dressed and asked him to leave.
(Tr. p. 20. 11. 3-6)

ARGUMENT

The respondent indicates in his Answer Brief that "there was no finding by the Referee that respondent touched the outside of Ms. R.'s vagina". (AB. p. 1). Respondent further argues that "the Referee's failure to find guilt of an allegation of misconduct, i.e., touching sexual organs, is tantamount to a finding that no such misconduct occurred". (AB. p. 14). However, the Report of Referee is silent on the issue of respondent touching Ms. R.'s vagina. It is speculation on respondent's part to assume the Referee made a negative finding of not touching the outside of her vagina. In fact, it was Ms. R.'s testimony that respondent did touch her back, thighs, and the outside of her vagina. Ms. R. testified as follows:

A: He was touching down right here ...

A: In between my legs, right here.

Q: In what areas of your legs did he touch?

A: Inside my thigh and what I told you before...
He pulled the side of my underwear over, and
on the outside of my vagina, never on the
inside.

(Tr. p. 19, 11. 10-21)

The Report of Referee is not being challenged by the Bar as to its factual findings. The Report is silent in regards to touching of the vagina. However, assuming arguendo the Referee

found no touching of the vagina, respondent's conduct as reflected in the Report of Referee is still deserving of a two (2) year suspension.

The Referee found that respondent, at his law office and again at the young lady's apartment, under the guise that it was necessary to prepare the personal injury action, did, without the approval of the young lady, touch her on the back and thighs. (RR, p. 1).

The Referee's finding that the touching was under a "guise" is significant in determining the appropriate discipline.

Further, respondent's characterization of his prior public reprimand as a "fee dispute" is similar to his watering down the severity of his conduct as in the instant case. Respondent's prior discipline in The Florida Bar v. Samaha, 407 So.2d 906 (Fla.1981), resulted from respondent's withholding of an unapproved fee from a worker's compensation claimant. As a result of respondent's "fee dispute", he was charged and adjudicated guilty of a misdemeanor offense.

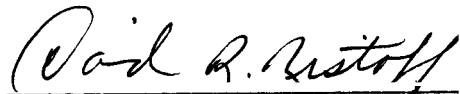
Perhaps most alarming about respondent's Answer Brief is the statement that the touching of Ms. R. was nothing more than an attempt to find out where she hurt. Respondent contends that "it was professional". (AB. p. 17). Respondent repeats his position again "If there is any doubt about the professionalism of Respondent's visit on December 11, 1988...". (AB. p. 17).

The Bar disputes respondent's characterization of his outrageous actions as "professional conduct". The touching

of a young client under the "guise" of conducting a personal injury action is not "professional conduct" for an attorney.

CONCLUSION


Respondent's touching of his client under the "guise" that it was necessary to prepare the personal injury action is deserving of a two (2) year suspension.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, THE FLORIDA BAR'S REPLY BRIEF, has been furnished to JOHN A. WEISS, Counsel for Respondent, Post Office Box 1167, Tallahassee, Florida 32302-1167, by Regular U.S. Mail; and to JOHN T. BERRY, Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, by Regular U.S. Mail; on this 9th day of Aug, 1989.



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